

Employee Ownership Report

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Key Issues in ERISA Fiduciary Insurance

Legal challenges by plan participants and the U.S. Department of Labor have made it more difficult for companies that sponsor ESOPs to create effective indemnification agreements to protect plan fiduciaries. This shift in the legal environment has made insurance more important for ESOP companies and fiduciaries, but seemingly minor wording differences in an insurance policy can have a substantial impact on your company's outcome, should you ever face a participant suit or action by the DOL or IRS.



To help plan sponsors make effective use of fiduciary insurance, Theodore M. Becker and Richard J. Pearl of the law firm Morgan, Lewis & Bockius wrote *A Buyer's Guide to Insurance for Fiduciaries of ESOPs and Other Benefit Plans*, published as an issue brief by the NCEO in September of 2011. Although this article summarizes some key issues, the issue brief is essential reading for anyone potentially interested in fiduciary insurance.

Step one is to make sure your policy actually does cover fiduciaries. Directors and officers (D&O) policies often exclude pension and welfare plans and may specifically exclude ERISA claims. These policies would also limit coverage to actions taken by the insureds in their capacity as directors and officers, but not as ERISA fiduciaries.

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Vigilent Launches New Wellness Program Providing Stock Options for Participation

Increasing numbers of companies are implementing wellness programs to promote the health of their employees. One of the challenges of these programs is getting enough employee involvement to generate a prompt return on the investment. Vigilent, a technology company that provides intelligent energy management solutions, has an innovative new approach. In August, the company launched a wellness program that provides stock options as an incentive for participation.

Vigilent is a privately held company. Approximately three-quarters of its equity is owned by employees, and the remaining quarter is held by angel investors and venture capital firms. Generally, Vigilent allocates options to employees based on how much they will likely contribute to the success of the company. This new wellness program provides another avenue for employees looking to invest in their employer.

The initiative was designed and is managed by SlimKinetic, a corporate wellness firm that specializes in proactive programs. Mark Housley, the CEO of Vigilent, worked with Brenda Given, founder and CEO of SlimKinetic, to develop the program realizing that the healthier his employees are, the harder everyone can work.

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Companies

■ **Mestel & Company** and **Hire Counsel**, two companies that provide legal recruiting and staffing services, became the first companies in their field to adopt an ESOP. The ESOP will cover employees and attorneys who work on a contract basis. The two companies, which have tripled in size over the past five years, have 22 offices and a network of over 50,000 attorneys.

■ Michael Evans founded **AIT Laboratories** in 1990 and sold it to the company's nearly 500 employees through an ESOP in 2009. In 2011, Evans announced a \$48 million gift to Marian University, allowing the university to establish the first new medical school in Indiana in 107 years.

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